THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT PETITION No.21188 OF 2005

Dt: 05.10.2005

Between:

The Chief Commissioner of Customs and

Central Excise, Hyderabad Zone

L.B.Stadium Road, Basheerbagh

Hyderabad and others … PETITIONERS

AND

R.Narasimha Murthy, s/o.Late R.Rama Joga Rao

Occ: Inspector of Central Excise

Ananthapur Division, Ananthapur … RESPONDENT

THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT PETITION No.21188 OF 2005

ORDER: (per the Hon'ble Smt.Justice T.Meena Kumari)

The present Writ Petition is filed by the petitioner-Department to quash the Order

dated 31.07.2003 in O.A.No.1505 of 2002 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

The respondent herein filed the above O.A. seeking a direction to the petitioners to promote him as per the seniority list of Inspectors of Excise dated 22.07.2002 from the date of promotion of his juniors with all consequential benefits by declaring the action of the petitioners in not promoting him to the grade of Superintendent of Excise while effecting promotions on 23.09.2002 as illegal and unconstitutional.

It is the case of the respondent-applicant that he joined in service as Inspector of Customs & Central Excise on 06.04.1992 after being selected by the Staff Selection Commission and was transferred to Inland Container Depot (for short ICD), Hyderabad where he joined on 06.07.2000. While so, the Officers of Directorate General of Revenue Intelligence conducted investigation into the allegations of misdeeds of some exporters and placed him along with other Officers under suspension on 07.06.2001. After a detailed investigation, his suspension was revoked on 01.07.2002 and he was posted to Ananthapur Division of Central Excise. While he was working at Ananthapur Division, the petitioners have issued seniority list of Inspectors by proceedings dated 22.07.2002 and the applicant stood at Serial No.457 in the said list. The Departmental Promotion Committee considered all the eligible names of Inspectors for promotion to the post of Superintendent of Central Excise from 28.07.2002 to 30.07.2002. The orders of promotions were issued on 23.09.2002 pursuant to the recommendations of the Departmental Promotion Committee. The applicant's name was not included in the list of promotions and the recommendation in relation to him was kept in a sealed cover. Though the applicant made oral representations to the petitioners to consider his case for promotion, they have not taken any action and issued a charge memo dated 25.09.2002. The charge levelled against the applicant is non-drawal of samples from the export consignment for test purposes to identify the goods. Since the said charge memo was issued to the applicant later than the orders of promotions were issued and since no disciplinary proceedings were pending against the applicant as on the date of consideration of his case for promotion by the Departmental Promotion Committee, the applicant filed the above O.A. seeking the relief stated supra.

The petitioners before the Tribunal have filed their reply statement stating that since show cause notice was issued to the respondent-applicant on 04.01.2002 under

Section 114(i) of the Customs Act, 1962, the recommendation made by the Departmental Promotion Committee in relation to him was kept in a sealed cover. The petitioners have not disputed the fact that as on the date of consideration of promotion of the applicant by the Departmental Promotion Committee, no charge memo was issued to him and he was not under suspension.

The Tribunal after hearing the counsel for both sides and relying upon the decision of the Supreme Court in **UNION OF INDIA AND OTHERS v. Dr. SUDHA SALHAN** and also the circular instructions issued by the Department vide Annexure A-VII, allowed the O.A. directing the Department to open the sealed cover pertaining to the promotion of the applicant to the cadre of Superintendent of Excise in pursuance of the recommendations of the Departmental Promotion Committee, and in case, the recommendation of the Departmental Promotion Committee is in favour of the applicant, the applicant be promoted retrospectively from the date on which his immediate juniors had been promoted and pay the salary and allowances to him. The Tribunal further ordered that the applicant is entitled to all consequential benefits like seniority and fixation of pay. Aggrieved by the same, the present Writ Petition has been preferred.

Heard the learned counsel and perused the impugned order.

As per the Circular instructions issued by the Department vide Annexure A-VII, the details of the Government servants in the consideration zone for promotion falling under the following categories, should be specifically brought to the notice of the Departmental Promotion Committee:

i. Government servants under suspension;

ii. Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and

iii. Government servants in respect of whom prosecution for a criminal charge is pending;

As observed by the Tribunal, admittedly, on the date of consideration of promotion of the applicant by the Departmental Promotion Committee i.e., on 30.07.2002, no charge sheet was issued to him and no disciplinary proceedings

were pending against him and he was also not under suspension on that date. That being so, we are of the view that he is entitled to be considered for promotion by the Departmental Promotion Committee as per the Circular instructions issued by the Government and also as per the law laid down by the Supreme Court in the above referred case.

Though a show cause notice has been issued to the applicant on 04.01.2002, since no charge memo has been issued on the basis of the said show cause notice subsequently and no disciplinary proceedings were pending in respect of the same by 30.07.2002, we find that the authorities were not justified in keeping the recommendations of the Departmental Promotion Committee in relation to the applicant in a sealed cover.

Under the above circumstances, we find no merit in the Writ Petition and hence, the same is dismissed.

(T.MEENA KUMARI, J)

(P.LAKSHMANA REDDY, J)

Dt: 05.10.2005

bsv/lvl